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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 RICKEY CALHOUN,

11 Plaintiff,

12 v.

13 REGINA HOOK,

14 Defendant.

No. C08-5697 RJB/KLS

ORDER DIRECTING SERVICE BY U.S.  
MARSHAL OF AMENDED COMPLAINT

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16 This civil rights action has been referred to United States Magistrate Judge Karen L.  
17 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. On January 6, 2009,  
18 Plaintiff was granted leave to proceed *in forma pauperis* and his Complaint was docketed. Dkts.  
19 # 4 and 5, respectively. On January 14, 2009, the Court entered an Order Directing Service of  
20 Plaintiff's Complaint. Dkt. # 6. The Court has recently been advised that through an  
21 administrative oversight, service of the Complaint was never completed.  
22

23 On February 11, 2009, Plaintiff filed a proposed First Amended Complaint. Dkt. # 7.  
24 Pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 15(a), "[a] party may amend the  
25 party's pleading once as a matter of course at any time before a responsive pleading is served."  
26 Otherwise, the party "may amend the party's pleading only by leave of court or by written

consent of the adverse party.” *Id.* Leave to amend “shall be freely given when justice so requires,” and “this policy is to be applied with extreme liberality.” *Id.*; *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9<sup>th</sup> Cir. 1990). After a responsive pleading has been filed, “leave to amend should be granted unless amendment would cause prejudice to the opposing party, is sought in bad faith, is futile, or creates undue delay.” *Martinez v. Newport Beach City*, 125 F.3d 777, 786 (9<sup>th</sup> Cir. 1997). In this case, where no responsive pleading has been filed, Mr. Calhoun may amend his pleading once as a matter of course

Accordingly, it is **ORDERED** that the United States Marshal shall effect service of Plaintiff’s Amended Complaint as follows:

(1) Service by United States Marshal

The United States Marshal shall send the following to each named Defendant for whom there is a filled out service form by first class mail: a copy of the Amended Complaint and of this Order, two copies of the Notice of Lawsuit and Request for Waiver of Service of Summons, a Waiver of Service of Summons, and a return envelope, postage prepaid, addressed to the Clerk's Office. All costs of service shall be advanced by the United States. **The Clerk shall assemble the necessary documents to effect service and shall send a courtesy copy of the Complaint to the Washington State Attorney General’s Office.**

(2) Response Required

Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of Service of Summons. Each defendant who timely returns the signed Waiver shall have **sixty (60) days** after the date designated on the Notice of Lawsuit to file and serve an answer or a motion directed to the complaint, as permitted by Rule 12 of the Federal Rules of Civil Procedure.

1 Any defendant who fails to timely return the signed Waiver will be personally served  
2 with a summons and complaint, and may be required to pay the full costs of such service,  
3 pursuant to Rule 4(d)(2). A defendant who has been personally served shall file an answer or  
4 motion permitted under Rule 12 within **thirty (30) days** after service.

5 (3) Filing and Service by Parties, Generally  
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7 All original documents and papers submitted for consideration by the court in this case,  
8 are to be filed with the Clerk of this court. The originals of all such papers shall indicate in the  
9 upper right-hand corner the name of the Magistrate Judge to whom the copies are to be  
10 delivered. The papers shall be accompanied by proof that such documents have been served  
11 upon counsel for the opposing party (or upon any party acting *pro se*). The proof shall show the  
12 day and manner of service and may be written acknowledgment of service, by certificate of a  
13 member of the bar of this court, or by affidavit of the person who served the papers.  
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15 (4) Motions

16 Any request for court action shall be set forth in a motion, properly filed and served. The  
17 motion shall include in its caption (immediately below the title of the motion) a designation of  
18 the Friday upon which the motion is to be noted upon the court's calendar. That date shall be the  
19 third Friday following filing of the motion (fourth Friday for Motions for Summary Judgment).

20 All briefs and affidavits in opposition to any motion shall be filed and served not later than 4:30  
21 p.m. on the Monday immediately preceding the Friday appointed for consideration of the motion.  
22 If a party fails to file and serve timely opposition to a motion, the court may deem any opposition  
23 to be without merit. The party making the motion may file, not later than 4:30 p.m. on the  
24 Friday designated for consideration of the motion, a response to the opposing party's briefs and  
25 affidavits.  
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1 (5) Motions for Summary Judgment

2 If one of the parties files a motion for summary judgment pursuant to Federal Rules of  
3 Civil Procedure 56, the opposing party should acquaint him/herself with Rule 56. Rule 56  
4 requires a nonmoving party to submit affidavits or other evidence in opposition to a motion for  
5 summary judgment if the moving party has shown the absence of issues of material fact and an  
6 entitlement to judgment as a matter of law. A nonmoving party may not rest upon the mere  
7 allegations or denials of prior pleadings. Rather, successful opposition to a motion for summary  
8 judgment requires the nonmoving party to set forth, through affidavits or other evidence, specific  
9 facts showing a genuine issue for trial. Failure by the nonmoving party to oppose a summary  
10 judgment motion or to present counter evidence could result in the court accepting the moving  
11 party's evidence as the truth, and entering final judgment in favor of the moving party without a  
12 full trial. *Rand v. Rowland*, 113 F.3d 1520 (9<sup>th</sup> Cir. 1997).  
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14 (6) Direct Communications with District Judge or Magistrate Judge

15 No direct communication is to take place with the District Judge or Magistrate Judge with  
16 regard to this case. All relevant information and papers are to be directed to the Clerk.  
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18 (7) Clerk's Action

19 The Clerk is directed to send a copy of this Order and of the General Order issued by the  
20 Magistrate Judges to Plaintiff.  
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22 DATED this 23rd day of March, 2009.

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25 Karen L. Strombom  
26 United States Magistrate Judge